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25 UNITED STATES DISTRICT COURT
26 FOR THE NORTHERN DISTRICT OF CALIFORNIA
27 SAN FRANCISCO DIVISION

28 AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,
et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.,

Defendants.

Case No. 3:25-cv-03698-SI

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' SUBMISSIONS RE:
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Pending before this Court is Plaintiffs’ request that the Court confirm that the May 2025 termination of probationary employees by the Department of Housing and Urban Development (“HUD”) are actions enjoined by the Court’s injunctions halting implementation of Executive Order 14210. ECF 148. Because HUD has yet to provide the Court with information in its possession that is directly relevant to this question, Plaintiffs request that the Court now direct HUD to produce for in camera review any and all versions of the Phase 2 ARRP, drafts or otherwise.

To recap the pertinent events: upon learning that HUD had terminated probationary employees on or about May 15, and after efforts to meet and confer failed to resolve the issue, Plaintiffs alerted the Court and requested an urgent status conference. ECF 148.¹ At the status conference held on June 4, 2025, this Court ordered HUD to file, by no later than June 9, “a factual showing (and further legal argument, if the government wishes) in support of its position as to why the ... HUD actions (see Dkt. No. 148) are not covered by the Preliminary Injunction.” ECF 151. HUD filed a June 9 declaration in response. ECF 155-1. The Court on June 13 found that the declaration did not provide the Court with “enough information to determine whether or not this action was prohibited by the Court’s injunction” and further ordered HUD to present for in camera review the March and April versions of the Agency RIF and Reorganization Plan (“ARRP”) by June 17. ECF 162. On June 17, upon review of HUD’s in camera submission, the Court observed: “HUD has submitted two versions of Phase 1 ARRPs but no Phase 2 ARRP.” ECF 169. The

¹ HUD had terminated probationary employees en masse at OPM’s direction on February 14, 2025. Two lawsuits (one in this Court, and one in the District of Maryland) challenged those terminations as unlawful. See *AFGE v. OPM*, N.D. Cal. Case No. 25-cv-01780-WHA; *Maryland v. USDA*, D. Md. Case No. 1:25-cv-00748-JKB. HUD was not one of the six federal agencies covered by the initial injunction issued by this Court. On March 13, 2025, the District of Maryland issued a TRO requiring HUD’s reinstatement of its terminated probationary employees. *Maryland v. USDA*, No. 1:25-cv-00748-JKB (D. Md. Mar. 13, 2025), ECF No. 44. Pursuant to that order, HUD reinstated those employees as of March 17, 2025. *Maryland v. USDA*, No. 1:25-cv-00748-JKB (D. Md. Mar. 17, 2025), ECF No. 52-1 at 24 (Michalski Declaration: explaining that 312 previously terminated probationary employees were reinstated to employment by March 17, 2025). The March 17 reinstatement appears to have occurred after the creation and submission of HUD’s Phase 1 ARRP to OMB/OPM on or around March 13. The TRO was later extended by a preliminary injunction, but the injunction requiring HUD’s reinstatement of probationary employees was subsequently stayed by the Fourth Circuit on April 9. *Maryland v. USDA*, No. 25-1248 (4th Cir. Apr. 9, 2025), ECF No. 139. HUD did not, however, immediately re-terminate those probationary employees, and waited until May 15 to do so, as previously established by Plaintiffs. ECF 148.

1 Court ordered HUD to provide the Phase 2 ARRPs or provide “a declaration explaining why such
2 ARRPs is not available” by June 18. On June 18, 2025, HUD submitted a declaration rather than
3 provide any Phase 2 ARRPs to the Court. ECF 170-1.

4 The April 18 HUD declaration appears to acknowledge that a Phase 2 ARRPs exists, but
5 states that it is a draft and therefore not within the technical language of the Court’s June 13 order
6 because it was not yet submitted to OMB/OPM. *Id.* However, the question before the Court is
7 whether HUD has terminated probationary employees as part of its implementation of the
8 President’s “Workforce Optimization” Executive Order, the OMB/OPM implementing
9 Memorandum, or the ARRPs created to implement those directives. *That* question does not turn on
10 whether the HUD Phase 2 ARRPs is still a draft nor whether it has been submitted to (or approved
11 by) OMB/OPM. Rather, if HUD has drafted a Phase 2 ARRPs that includes probationary
12 terminations in its workforce reduction efforts and calculations (or, on the other hand, if it does not
13 address or include those terminations), that information is directly relevant to the question before
14 this Court.

15 As Plaintiffs previously explained, there is strong reason to believe that HUD has
16 considered these probationary terminations to be part of its efforts to comply with the challenged
17 Executive Order: the OMB/OPM Memorandum identified probationary terminations as a “tool” to
18 be used to effectuate the President’s directive, and the OMB/OPM Phase 2 cover sheet directs each
19 agency to report the numbers of terminated probationaries. ECF 148 By the time HUD’s new
20 terminations took place, HUD had submitted at least one ARRPs, and the status of the Phase 2
21 ARRPs is not known to anyone other than Defendants. HUD should be required to turn over
22 relevant information that will shed light on whether HUD considered the May termination of
23 probationary employees to be part of the ARRPs and workforce reduction efforts to implement the
24 Executive Order at issue in this case. Therefore, in order for this Court to resolve the question of
25 whether HUD has complied with the Court’s injunction, Plaintiffs request that HUD be required to
26 promptly provide any and all versions of the Phase 2 ARRPs (and any and all attachments or cover
27 sheets), regardless of whether that ARRPs was considered a “draft” and/or submitted to OMB/OPM,
28

1 for this Court's in camera review and to Plaintiffs' counsel under the same limitations set out in the
2 Court's May 15, 2025 order, ECF No. 109 at 5.

3
4
5 DATED: June 20, 2025

Respectfully submitted,

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